

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

To: The Commission

NATIONAL VIDEO RELAY SERVICE COALITION
COMMENTS TO FURTHER NOTICE OF PROPOSED RULEMAKING

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SUMMARY

The National Video Relay Service Coalition (the “Coalition”) files these comments in response to the Commission’s Further Notice of Proposed Rulemaking and in support of the Petition for Rulemaking submitted by the California Coalition of Agencies Serving the Deaf and Hard of Hearing asking for mandatory Video Relay Service (“VRS”). The Americans with Disabilities Act (“ADA”) requires that the Commission ensure the provision of Telephone Relay Service (“TRS”) in a manner that is functionally equivalent to voice telephone service, and that the Commission’s regulations encourage the use of existing technology and do not discourage or impair the development of improved technology.

VRS is a feature of TRS that comes close to providing functional equivalency to people who are deaf or hard of hearing. It permits those who are deaf or hard of hearing to converse in their native language without the delays inherent in typing text messages. For the Commission to fulfill the requirements of the ADA, people who are deaf or hard of hearing need unrestricted access to VRS, and this is best achieved by requiring that VRS be a mandatory form of TRS. However, for VRS to be fully functionally equivalent, the various features that are available to voice telephone users and traditional TRS users, such as service availability 7 days a week, 24 hours a day, call answering within 10 seconds at least 85 percent of the time, E911, and video mail must also be available to VRS users. The Commission must therefore adopt a cost reimbursement mechanism that fully funds these features and the reasonable and prudent research and development costs to develop and implement these features as well as the costs to hire and train new interpreters.

The Interstate TRS Fund Council (“Council”) has worked well, and the Coalition suggests that any reforms or modifications to the Council be limited. The existing membership

and nominating process is appropriate. However, the Commission should take advantage of the wide range of TRS experiences of the Council members and expand the advisory role of the Council to include issues that are, by extension, an expanded scope of how the Interstate TRS funds are spent. In addition, the Coalition recommends expanding the number of representatives selected by the Deaf and Hard of Hearing Consumer Advocacy Network from two to three and requiring that the third member be selected from the community at large.

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COMMENTS TO FURTHER NOTICE OF PROPOSED RULEMAKING**

The National Video Relay Service Coalition (the “Coalition”), pursuant to Section 1.415 of the Federal Communications Commission’s (“Commission”) Rules,¹ hereby submits its comments (1) in response to the Further Notice of Proposed Rulemaking (“FNPRM”)² released by the Commission on June 30, 2004 and (2) in support of the Petition for Rulemaking submitted in this proceeding on May 27, 2004 by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”) asking for mandatory Video Relay Service (“VRS”). In its FNPRM the Commission sought comment on whether it should require VRS as a mandatory form of Telecommunications Relay Service (“TRS”),³ whether VRS should be required to be offered 7 days a week, 24 hours a day,⁴ whether a particular speed of answer requirement should

¹ 47 C.F.R. § 1.415.

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 90-571, CC Docket No. 98-67, CG Docket No. 03-123, FCC 04-137 (rel. June 30, 2004).

³ *Id.* at ¶¶ 243-245.

⁴ *Id.* at ¶ 245.

be adopted for VRS,⁵ and invited comment on the Petition for Rulemaking filed by CCASDHH.⁶ The Commission also sought comment on whether changes should be made to the composition of and functions of the Interstate TRS Fund Council (the “Council”).

On behalf of the Deaf and Hard of Hearing consumers of the United States of America, the Coalition is separately submitting a petition for mandatory VRS signed by 5509 members of the deaf and hard of hearing communities. The Coalition is asking that the petition as well as the individual comments written by a number of signatories to the petition be treated as comments in response to the FNPRM and in support of the Petition for Rulemaking filed by CCASDHH.

I. The Coalition Member Organizations

The National Video Relay Service Coalition is an *ad hoc* group that was formed to address VRS issues and includes the following organizations: Telecommunications for the Deaf, Inc. (“TDI”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), National Association of the Deaf (“NAD”), The Association for Late-Deafened Adults (“ALDA”), the American Association of People with Disabilities (“AAPD”), Deaf and Hard of Hearing in Government (“DHHIG”), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), the Student Body Government of Gallaudet University (“SBG”), and the Registry of Interpreters for the Deaf, Inc. (“RID”).

TDI is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind so that they may attain the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring

⁵ *Id.* at ¶ 246.

⁶ *Id.* at n.667.

equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

DHHCAN, established in 1993, serves as the national coalition of organizations⁷ representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

Established in 1880, the NAD is the nation's oldest and largest constituency organization safeguarding the accessibility and civil rights of 28 million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care, and telecommunications. A private, non-profit organization, the NAD is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

⁷ The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf Inc.(TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

AAPD is a national non-profit membership organization promoting political and economic empowerment for all children and adults with all types of disabilities. AAPD has a strong interest in accessible communications so that people with disabilities can participate fully in all aspects of society.

Formed in Chicago, Illinois in 1987, ALDA works collaboratively with other organizations around the world serving the needs of late-deafened people. Through its chapters and groups around the country, ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for reintegrating late-deafened adults into all aspects of society. ALDA also provides educational information concerning issues affecting late-deafened adults, as well as advocacy on behalf of, and support for, late-deafened adults and their families and friends.

DHHIG is a national nonprofit organization addressing the needs and concerns of deaf and hard of hearing Government employees. Its purpose is to support full communication access, advancement, and retention of deaf and hard of hearing employees in Government, and dismantling communication barriers in the workplace.

CCASDHH was established in 1988 and incorporated as a nonprofit statewide membership organization. Its members include eight nonprofit community-based organizations providing various social services “of by and for” deaf and hard-of-hearing Californians -- NorCal Center on Deafness; Greater Los Angeles Agency on Deafness; Deaf Counseling, Advocacy and Referral Agency; Deaf Community Services of San Diego; Deaf and Hard of Hearing Services; Center on Deafness: Inland Empire; Orange County Deaf Equal Access Foundation and Tri-County GLAD; and the California Association of the Deaf, a statewide membership organization representing deaf and hard-of-hearing consumers.

On an annual basis, CCASDHH's member agencies ensure that a variety of social services are available serving over 300,000 deaf and hard of hearing individuals regardless of where they live throughout all 58 counties in California. Through its member agencies' diverse workforce, including Native American, Hispanic, Asian, Russian, Hmong, and African-American individuals who are deaf or hard of hearing, CCASDHH works hard to improve the quality of lives of Californians who are deaf or hard of hearing and who otherwise would not have full access to such services as telecommunications, education, certified sign language interpreters, parent-to-parent support for newborns identified with a hearing loss, literacy, employment development, and advocacy. Member agencies and the California Association of the Deaf were the primary forces in state legislation that established the TTY equipment distribution program and the California Relay Service, long before the Americans with Disabilities Act was passed. As direct service providers, CCASDHH member agencies have the pulse of the community they serve to best determine needs and priorities.

SBG, Gallaudet University was established in 1948. Even though there were other organizations that provided numerous opportunities for leadership, personal growth and development, and fellowship for the Gallaudet student body, there was still a need for a single venue from which the students can formally maintain relations with the University administration. Thus, SBG was established as a representative group to advocate for campus policy changes. Structured via three functional branches - executive, judicial, and legislative, the SBG remains a strong entity on campus with biweekly Student Congress meetings and daily Executive Branch and Judicial Branch operations. Their past achievements include the successful Deaf President Now movement in 1988, management changes in the student

infirmity, protests for better TV and movie captioning, and the establishment of the Rathskellar/Abbey.

The philosophy of RID is that excellence in the delivery of interpretation and transliteration services among people who are Deaf or Hard of Hearing and people who are hearing will ensure effective communication. As the professional association for interpreters and transliterators, the RID serves as an essential arena for its members in their pursuit of excellence.

II. The Commission Should Require VRS as a Mandatory Form of TRS

In 1990, Congress enacted the Americans with Disabilities Act (the “ADA”).⁸ The main purpose of the ADA was to facilitate the integration of people with physical and other challenges into the mainstream of society so that no person would be left behind. Title IV of the ADA addresses access to telecommunications by deaf and hard of hearing persons. Section 401 of Title IV, which was codified in Section 225 of the Communications Act of 1934, as amended (the “Act”),⁹ requires that TRS be offered and defines TRS as:

[T]elephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio.¹⁰

In short, the ADA requires that TRS services be functionally equivalent to voice telephone services. The ADA goes on to state:

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Act, the use of existing

⁸ PL 101-336, July 26, 1990.

⁹ 47 U.S.C. § 225.

¹⁰ 47 U.S.C. § 225(a)(3).

technology and do not discourage or impair the development of improved technology.¹¹

In other words, the ADA not only requires the Commission to “encourage . . . the use of existing technology,” but equally important, the Commission may not “discourage or impair the development of improved technology.”¹² Because VRS is a relatively new technology that provides a form of TRS that is closer to functional equivalency than traditional TRS, Section 225 of the Act requires the Commission to write regulations that do not discourage or impair the development of VRS. As explained below, the best way to do this is to require VRS as a mandatory feature of TRS.

A. The Public Interest Need for Reliable VRS

As discussed above, a critical aspect of equal access to telecommunications is the ability to utilize new and innovative technologies that better enable individuals who are deaf or hard of hearing to communicate with family, friends, employers, co-workers, and others. VRS, like any other TRS service feature, is equally important to the rest of the general mainstream to use to contact people who are deaf or hard of hearing. It is an equal access service that can benefit any individual or entity in America.

VRS makes relay services closer to being functionally equivalent to conventional telephone services for individuals who use American Sign Language (“ASL”) or oral or signed transliteration. It is a relay service for sign language users and speech readers that provides the hearing party with native spoken English interpretation in real time, whereas this might not be entirely possible using other TRS services. It enables these individuals and groups to take advantage of the opportunities provided by such functional equivalency.

¹¹ 47 U.S.C. § 225(d)(2).

¹² *Id.* See *FNPRM* at ¶ 4.

ASL is a visual language, in which factors such as facial expression, movement, and body language are key. These cannot be expressed in writing. Therefore, unlike traditional TTY TRS and Internet Protocol TRS, VRS provides individuals who are deaf or hard of hearing an opportunity to communicate in their native language—ASL. Equally important, VRS provides the ability to communicate in near real-time with greater accuracy.¹³ CCASDHH has noted that “[t]he same conversation using text-based relay typically takes at least five to seven times longer than one using traditional voice transmission.”¹⁴ As a result, the provision of VRS is consistent with the ADA’s mandate to the Commission to ensure that relay services are available “in the most efficient manner.”¹⁵ VRS enables these individuals to take advantage of highly-qualified interpreters with extensive experience in the deaf community, including a deep understanding of Deaf Culture and other norms and a higher level of skills maintenance with professional interpreting associations.

VRS enables persons who are deaf or hard of hearing and their contacts to retain the quality of real-time, accurate communication not possible with traditional relay services or TTY. Without VRS, these individuals and businesses are hampered by the delays and inaccuracies inherent with TTY and Internet Protocol TRS, which rely upon an operator to voice the typewritten messages of a person who is deaf or hard of hearing and type the responses of the person on the other end of the call. The need to manually type conversations creates lags and delays in flow of conversation and impedes the ability of the TRS user and his or her contact to communicate real-time. These delays, as well as the unfamiliarity of the general mainstream

¹³ CCASDHH, *Petition for Rulemaking*, June 27, 2004, at 5-7.

¹⁴ *Id.* at n.13.

¹⁵ 47 U.S.C. § 225(b)(1).

with these services make it difficult for people who are deaf or hard of hearing to communicate effectively with those in the general mainstream. Even if a person from the general mainstream has heard of these services, they may not be familiar with how the services work and may mistake a traditional TRS call for a telemarketing call. Therefore, often there may be surprise or uncertainty encountered by a hearing person when receiving calls from a person using this equipment. Indeed, as the Commission noted, many people who are not familiar with or do not understand TRS hang up on callers utilizing such services.¹⁶ This type of mistaken reaction by a hearing person unfamiliar with traditional TRS can be humiliating to a TRS user who is deaf or hard of hearing.¹⁷

VRS avoids all of these problems by enabling people who are deaf or hard of hearing and their contacts to communicate in their native language in near real-time. Because a VRS user is able to see and be seen by an interpreter fluent in sign language who fully understands the visual nuances associated with ASL, the user is able to see what the speaking party is saying at the same time that person is speaking and immediately respond. In addition, when the VRS user initiates communication or responds to the speaking party, the sign language-fluent interpreter is able to begin translating for the speaking person immediately rather than asynchronously which

¹⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, released March 6, 2000, at para. 104 (“*2000 TRS Report & Order*”).

¹⁷ This is especially true for people who are deaf or hard of hearing seeking employment. To even be considered for a job interview, someone who is deaf or hard of hearing has to demonstrate that he or she is as qualified for the job as a hearing person. If the potential employer hangs up on the person who is deaf or hard of hearing, the opportunity for being granted even a job interview is lost. Eighty percent of those who are deaf or hard of hearing are on welfare. If the goal of the Federal government is to reduce welfare dependency, then requiring VRS as a mandatory feature of TRS will play a very important role in assisting those who are deaf and hard of hearing seek employment.

is necessary for traditional TRS because typing is by its very nature much slower than voice speaking or sign language. As a result, there is minimal to no delay and much greater accuracy in communication and conveyance of language nuances. In fact, to both parties on the call, it appears as if they are conversing with another person in their native language.¹⁸

Moreover, because VRS provides TRS users with experiences that are much closer to the functional equivalent of voice telephone service to the general mainstream, VRS gives these individuals the opportunity to better communicate with friends, family, employers, prospective clients and public health and safety organizations. The hundreds of comments filed in this docket as well as the 5509 signatories to the Deaf and Hard of Hearing consumers of the United States of America petition for mandatory VRS represent only a fraction of the many people who are currently using VRS to improve the quality of their lives.

The Coalition emphasizes that VRS provides a unique service to the TRS user community that is critical to their ability to communicate accurately and effectively with other members of society. As the Commission noted, VRS “make[s] relay services functionally equivalent to conventional telephone services for individuals whose first language is American Sign Language [ASL].”¹⁹ Therefore, it is imperative that VRS be readily available to people who are deaf or hard of hearing.

¹⁸ Many people who are deaf or hard of hearing are often more fluent in sign language than in English because they speak in sign language on a daily basis. Therefore, VRS makes it possible for a hearing person and a person who is deaf or hard of hearing to have a conversation using the language where each has the greatest fluency.

¹⁹ 2000 TRS Report & Order at para. 23.

B. Without Mandatory VRS, the Quality and Availability of Service Will Continue to Deteriorate

Since the VRS rate reductions have been instituted,²⁰ the Coalition members and their constituents have seen a severe reduction in the quality and availability of service. These reductions have already had detrimental effects on the consumers and businesses that rely on this service. In particular, the reductions have curtailed the ability of people who are deaf or hard of hearing and their contacts to take advantage of the opportunities and benefits afforded by equal access to the telecommunications revolution.

Prior to the rate reductions, consumers expected VRS services to be available on demand, in much the same way that voice telephone consumers expect to be able to pick up the telephone and be able to communicate instantly with other voice telephone consumers. In order to achieve close to functional equivalency, VRS providers were answering VRS calls at the same speed as traditional TRS calls. In addition, consumers expected that the interpreter they reached would be able to handle a variety of calls with a variety of different purposes and callers with a variety of different needs.

Unfortunately, because of reductions in the VRS reimbursement rate, consumers of VRS have experienced a significant deterioration in service quality and availability. VRS providers have reduced their hours of operation,²¹ and consumers often experience lengthy answer time

²⁰ *Telecommunications Relay Services*, Order, CC Docket 98-67, DA 03-2111, released June 30, 2003 (“*Bureau 2003 Reimbursement Order*”); *Telecommunications Relay Services*, Order, CC Docket No. 98-67, DA 04-1999, released June 30, 2004 (“*Bureau 2004 Reimbursement Order*”).

²¹ *See, e.g.*, Hands On Video Relay Services, Inc., Comments on Payment Formula and Fund Size Estimate for the Interstate TRS Fund for 2004-05; Request for Full Commission Action; and Request for Designation of Evidentiary Hearing, May 24, 2004, at 3-5 (“HOVRS Comments”); Communication Service for the Deaf, Inc., Comments of CSD on Payment Formula and Fund Size Estimate Interstate TRS Fund for July 2004 through June 2005, May 19, 2004, at 9 (“CSD Comments”); Comments of Hamilton Relay, Inc., May 24, 2004, at 6-7;

delays,²² with wait times as long as 20-30 minutes.²³ Because of the locations of many VRS providers, consumers in different parts of the country have had to adjust their daily schedule in order to utilize the benefits of VRS. For example, when VRS was available 24/7, a consumer in Hawaii wishing to contact someone on the east coast of the U.S. could call at a mutually convenient time for the two parties. Now, this person in Hawaii may need to get up in the middle of the night in order to utilize a VRS service.

C. Mandatory VRS Must Include All Aspects of Functional Equivalency

Unless VRS becomes a mandatory feature of TRS, consumers will continue to experience a deterioration in availability and quality of service in violation of the functional equivalency requirement of the ADA. To achieve functional equivalency, VRS must be readily available on-demand and must provide the ability for people who are deaf or hard of hearing and their contacts to communicate spontaneously and accurately. Because voice telephone service is available 7 days a week, 24 hours a day, VRS must be also, or it will not be functionally equivalent. Because voice telephone users ordinarily obtain instant dial tone, VRS providers must answer 85 percent of all VRS calls within 10 seconds as required by Section 64.604(b)(2) of the Commission's rules,²⁴ or VRS will not be functionally equivalent.

It is more costly to provide 24/7 service with a 10 second speed of answer standard than the limited VRS service that is currently available, because more interpreters are needed to be

AT&T Comments, May 24, 2004, at 3; Sprint Corporation, Petition for Reconsideration, July 30, 2003, at 17 (Sprint Reconsideration"); CSD of Texas Open Letter to Consumer Leaders, dated July 17, 2003, at 3 ("CSD Letter").

²² See, e.g., HOVRS Comments at 9-11; CSD Comments at 9; Sprint Reconsideration at 17.

²³ HOVRS Comments at 3, 9-11.

²⁴ 47 C.R.R. § 64.604(b)(2).

standing by to provide a functionally equivalent grade of service. In developing its methodology for determining the VRS compensation rate, the Commission must take these factors into account and must ensure adequate funding to compensate VRS providers for the cost of functionally equivalent services.

But to achieve true functional equivalency, additional service features need to be offered as well. For example, voice telephone users have voice mail available to them. VRS users should have access to video mail so that they can retrieve messages in a functionally equivalent way to voice mail. Voice telephone users have E911 services. It is critical from a public safety point of view that VRS users have E911 services.

The coalition understands that the technology may not yet exist for video mail and VRS E911 to be functionally equivalent today. But just as the Commission mandated the development and implementation of technology for wireless E911 services,²⁵ the Commission should in its rules mandate the development and implementation of technology for VRS E911 services. However, mandating technology is also not enough. In developing its methodology for determining the VRS compensation rate, the Commission must ensure adequate funding to compensate VRS providers for research and development costs that are needed to develop these new products and technologies. Although the Commission denied research and development funding when setting the VRS compensation rates, it did so in the context of VRS not yet being a mandated service.²⁶ As a mandated service, features such as E911 and voice mail are needed to provide functional equivalency. Therefore, it is necessary to compensate VRS providers for the research and development costs that are reasonable and prudent to achieve those goals.

²⁵ 47 C.F.R. § 20.18.

²⁶ *FNPRM* at ¶¶ 188-190.

D. Interoperability

A number of VRS consumers have been experiencing the problem of their VRS provider blocking calls to other VRS providers in instances where the consumer's VRS provider's system was temporarily not functioning or did not have available capacity at the time that the consumer was attempting to place a call. This is a particularly serious problem when a consumer is attempting to make a 911 call. Many consumers have dropped their TTY landline connections in favor of VRS, so VRS is their only means of making a call in the event of an emergency. Interoperability is thus critical for public safety reasons.

In other words, blocking or otherwise restricting VRS access in video relay products is both unfair and dangerous. It is unfair because it does not allow VRS consumers access that is functionally equivalent to voice telephone users, and it is dangerous because emergency calls are blocked. Just as a telephone subscriber can access an alternate interexchange carrier by dialing an access number, and just as a wireless subscriber can roam on a competitor's network in instances when the subscriber cannot connect with the subscriber's home system, to achieve functionally equivalent service, the Commission must mandate that a VRS subscriber be able to connect to a competing VRS provider in instances when the subscriber cannot connect to its usual VRS provider. In particular, just as the Commission requires that wireless 911 calls be handled by a competitor in instances when the subscriber's system does not provide a connection,²⁷ this must also be the case for VRS.

²⁷ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *911 Call Processing Modes*, WT Docket No. 99-328, Order, FCC 04-160, released July 22, 2004; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Report and Order, 14 FCC Rcd. 10954 (1999).

In addition, many business people rely on VRS for business calls, and lack of interoperability has an adverse impact on such businesses. In other words, if a call is blocked as a result of network outage or lack of capacity, a business person must be able to use an alternate VRS provider so that the call can be placed on a timely basis. Similarly, people who are deaf or hard of hearing need to be able to stay in touch with family members, especially when there are family emergencies. In other words, just as voice telephone users and TTY users enjoy interoperability, VRS interoperability is a key aspect of functional equivalency as required by the ADA.

Business people who are deaf or hard of hearing need to be able to have VRS conference calls that may include multiple VRS users as well as multiple hearing parties. Just as voice telephone users and TTY users who enjoy interoperability can have conference calls, VRS users should be able to have conference calls as well. Thus, interoperability is necessary to achieve functional equivalency for VRS conference calls.

Lastly, interoperability between forms of TRS is needed for TRS to be functionally equivalent to voice telephone service. As mentioned above, VRS users are increasingly giving up their TTY service. But these consumers still need a way to communicate by telephone with people who are deaf or hard of hearing who do not have VRS service and rely on TTY service, including those who do not use ASL. Therefore, there needs to be a way to make calls between VRS and traditional TRS. Interoperability between VRS and other forms of TRS such as TTY is thus a necessary aspect of functional equivalency as required by the ADA.

E. Availability of Interpreters

In the *FNPRM*, the Commission asked “whether there are sufficient numbers of interpreters in the labor pool such that if the provision of VRS were mandatory, providers could

hire a sufficient number of interpreters to handle the call volume.”²⁸ This question shows a lack of understanding of how the labor market works and is not germane to making a determination on the main public policy question—that is, whether the commission should require VRS as a mandatory feature of TRS. Since the Commission reduced the VRS compensation rate, VRS providers have been unable to hire and train new qualified interpreters to meet the highly specialized skill set required for VRS services.²⁹ As long as the availability of funds to train additional interpreters remains limited and demand for additional interpreters remains low, there will be little incentive for people to learn to be interpreters. On the other hand, if VRS is mandated, and the Commission provides appropriate reimbursement to VRS providers to train new interpreters, VRS providers will be able to afford training, and the demand for new interpreters will encourage people to enter the field of employment. In other words, mandatory VRS available 7 days a week, 24 hours a day with a 10-second answer time standard will make the market for VRS interpreters.

F. Mandatory VRS is Needed Immediately

As long as VRS remains a non-mandatory service, people who are deaf and hard of hearing are cut off from functionally equivalent access to the telecommunications network, and as a result, the Commission is not in compliance with the ADA. Therefore, to achieve compliance with the ADA, the Commission must require that VRS be a mandatory service at this time. In the *FNPRM*, the Commission asked whether it “should require VRS as a mandatory service if, and when, a jurisdictional separation of cost scheme becomes effective for VRS, or

²⁸ *FNPRM* at ¶ 245 (footnote omitted).

²⁹ Sorenson Media, Inc. Petition for Reconsideration of the *Bureau 2003 Reimbursement Order*, July 30, 2003, at 3.

whether these two issues need not necessarily be linked.”³⁰ The Coalition finds it essential that VRS be required if, and when a jurisdictional separation of costs becomes effective. Otherwise, there may be some states that would not allow for VRS reimbursement for intrastate calls within their jurisdiction, and people who are deaf or hard of hearing would be cut off from intrastate VRS service at rates equivalent to the rates for voice telephone calls in those states. On the other hand, there is no reason to wait until a jurisdictional cost separation scheme is enacted to make VRS a required service. Up until now, VRS providers have been compensated from the Interstate TRS Fund, and this can continue until a fair and effective separations methodology is adopted.

III. Any Reforms or Modifications of the TRS Fund Advisory Council Should be Limited

In the *FNPRM*, the Commission suggested a need to reevaluate the mission of the Council in light of changes in TRS funding since the Council’s inception. Specifically, the Commission requested comment on the composition of the Council, including the nominating process, and its role in connection with the TRS cost recovery regime.³¹ The Coalition believes the Council has fulfilled the function for which it was created admirably, including advising the fund administrator and the Commission on TRS issues, and has represented the interests of all TRS constituents in a fair and equitable manner. Nonetheless, because of uncertainties in the guidelines or limitations in the authority of the Council, the Council has been unable to bring these same benefits to other aspects of TRS, such as outreach and quality of service, both of which have a direct bearing on reimbursement. The Council needs to be able to examine whether funds are being spent appropriately and correctly, and whether there are service

³⁰ *FNPRM* at ¶ 245.

³¹ *FNPRM*, at ¶¶ 253-254,

improvements that might financially benefit the program. Accordingly, while the Coalition does not believe any changes are necessary to the composition or nominating process of the Council, the Coalition urges the Commission to consider expanding the advisory role of the Council to include other TRS issues.

A. The Council's Existing Membership Composition and Nominating Process are Appropriate

The Council's bylaws require that the Council consist of at least six and not more than thirteen members.³² Currently, the Council consists of thirteen members. The Council's membership has in the past and continues to provide a wide range of perspectives from various TRS constituent groups, including the hearing and speech disabled communities, TRS providers, TRS users, state public utility regulatory agencies and relay administrators, and the interstate telecommunications service providers who contribute to the TRS Fund. This diverse membership enables the Council to bring a broad range of expertise and perspective to the evaluation of TRS funding and other issues.

Each of these constituent groups selects representatives to serve on the Council. TRS providers select their representative through a nomination process administered by NECA. Representatives for the state regulatory agencies are appointed by the National Association of Utility Regulatory Commissioners. The National Association for State Relay Administration selects the representatives for the state TRS administrators. Representatives for the interstate telecommunications providers are selected by major industry organizations, such as CompTel/Ascent and OPASTCO. Finally, representatives for the deaf and hard of hearing communities are selected from nominees of consumer organizations such as the National Association of the Deaf, Self Help for Hard of Hearing People, United Cerebral Palsy, and

³² *By-Laws of the Interstate TRS Fund Advisory Council*, adopted March 1995.

DHHCAN. In this way, the Council members selected by each group not only bring to the table their own unique expertise and experience, but also the particular policy and other concerns of their constituent group.

The Commission noted that the Council does not include representatives from the TRS Fund or of consumers of interstate telecommunications services that contribute to the Fund.³³ While the Coalition believes the current composition of the Council is appropriate for its function, an increase in the number of interstate service provider representatives on the Council and/or the addition of consumers of interstate telecommunications services or their representatives could positively influence the administration of the Fund. The Coalition points out that the Council already includes representatives of the interstate telecommunications service providers who are the contributors to the Fund and these representatives do in some sense represent the Fund. Because the Council's role requires it to be independent of the TRS Fund or the Fund Administrator, the addition of representatives of the Fund on the Council could weaken that independence. To the extent such representatives would add another perspective to and thus strengthen the Council's recommendations, their inclusion would be justified.

Currently, DHHCAN recommends two members to the Council, typically from the deaf and hard of hearing community. As one possible solution to the Commission's proposal to include additional consumer representatives on the Council, the Coalition proposes that the number of members DHHCAN may recommend be increased from two to three and that the third member be selected from the community at large. Under this proposal, the Commission would be able to change the composition of the Council and increase consumer representation without having to change the structure of the Council or the manner in which Council members

³³ FNPRM, at ¶ 253.

are selected. This proposal would also enable the Commission to increase representation on the Council from the public at large without taking away representation of those groups most directly affected by the TRS Fund – TRS users and providers.

If the Commission elects to increase the number of interstate provider representatives or add consumer representatives to the Council, the Commission must also ensure that the representation of TRS users and providers remains proportional to fund contributors. Because the Council will be advising the FCC and the Fund administrator regarding cost recovery and TRS funding issues, it is critical that those constituents most directly affected by such funding decisions – the providers and users of TRS – continue to have an equal role in funding decisions.

The Coalition does not believe that the current process for selecting/nominating Council members should be modified. The current process has been in place since the FCC created the Council and has worked well to produce a diverse, representative council. The success of this system could be improved by increasing the number of industry, consumer and regulatory organizations from which members could be selected, specifically identifying the expertise and experience needed for membership, or defining a clear policy on conflicts of interest, responsibilities and duties. To the extent a review of the current process is necessary, it makes sense for the Council itself to conduct this review, at least initially, as its members are in the best position to determine what processes should be used to select members, the qualifications necessary to perform the Council's role, and the issues to be addressed. The Commission can always retain authority to approve or modify the Council's recommendations.

B. The Council Should be Authorized to Provide an Advisory Role to the Commission and the Fund Administrator on Issues Other than TRS Funding

As noted, the Council's members represent a broad range of individuals and organizations, and have a substantial level of expertise and experience in their various fields. To

date, the Council has brought the weight of this expertise to bear on cost recovery issues and has served well in its primary role as a monitor of TRS cost recovery and advisor to the TRS Fund. As the TRS Fund continues to grow, the Council will continue to play a critical role in monitoring and advising the TRS Fund administrator regarding cost recovery issues. At the same time, the Commission and the Fund administrator should be able to draw upon this expertise for all TRS issues, not just cost recovery or funding matters. Many of these issues, including service quality, education and outreach are directly affected by cost recovery issues and TRS funding.

For these reasons, the Commission and the Fund administrator should enlist the support and recommendations of the Council in those circumstances where the Council can provide insight, clarification, or perspective that will enable the Commission and TRS Fund to develop policies that will ensure the continued growth of TRS, the development of new relay technologies, and greater access to telecommunications for persons with speech or hearing disabilities.

In addition, under the current structure, the Council's recommendations are reviewed by the Board of NECA's billing and collection agent, the North American Billing and Collection, Inc. ("NBANC"), which submits final recommendations to NECA for submission to the FCC. After the Council's recommendations are given to the Board, the Council is not actively involved in the process unless the Board or NECA consult with the Council prior to submitting a recommendation to the FCC. The Coalition believes that the Council's advisory role and the administration of the TRS Fund would be enhanced if one member of the Council also served on the NBANC Board. In this way, the Council's member could work directly with NBANC and NECA in reviewing the Council's recommendations and including those recommendations in the

final submission to the FCC. Because the Council is tasked with monitoring and advising NECA regarding cost recovery issues, it makes sense for the Council to be involved in funding decisions throughout the process rather than only at a single stage in the process.

IV. Conclusion

For the reasons stated herein, the National Video Relay Service Coalition respectfully requests that (1) the Commission require VRS as a mandatory form of TRS and require all the features and provide the cost reimbursement that would make VRS a functionally equivalent telecommunications service; and (2) retain the existing membership and nominating process for the TRS Advisory Council, but expand the advisory role of the Council to include issues other than TRS funding.

Respectfully submitted,

/S/

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